

Privacy: Surveillance and the Interception of Communications

In June 1998 the Commission published its report on [*Privacy: Surveillance and the Interception of Communications \(LRC 57-1998\)*](#) which follows the Commission's consultation paper on [*Privacy: Surveillance and the Interception of Communications \(LRC CP 10-1996\)*](#) and forms part of its First Programme of Law Reform.

The Report concerns the dangers posed to the privacy of ordinary citizens by surveillance, and especially modern forms of surveillance. This subject provides a classic example of where contemporary practice has outstripped the law's capacity to protect and vindicate a fundamental human right - the right of privacy. The status of privacy as a human right is universally acknowledged and provided for in particular not only by Article 8 of the European Convention on Human Rights but also by the Constitution as interpreted by our courts. The Report itself is based on extensive comparative research which shows the kinds of solutions adopted or proposed elsewhere and has regard to written submissions made on the Commission's earlier Consultation Paper on this subject and at a 'listening exercise' on the topic held in July 1997 at which most of those interested in the issue were in attendance.

The Commission recommends the enactment of a coherent set of civil remedies, criminal sanctions and other regulatory and incidental safeguards in order to ensure that the law is adequate to the task of handling the privacy dangers inherent in modern forms of surveillance. Recommendations cover:

- Civil Law Reform
- A 'Public Interest' Defence for the Media
- Criminal Law
- Safeguards Covering State Surveillance of Private Places
- Safeguards Covering Public Surveillance
- Protection of Privacy in Relevant Judicial Proceedings

The core recommendation of the Commission was for the introduction of a new tort of privacy-invasive surveillance, as well as a related tort of harassment. The main ancillary recommendation was for the enactment of a tort directed against the unjustified disclosure through publication or otherwise of information, etc., obtained as a result of unlawful surveillance or harassment. A range of defences to the proposed torts was specified. Various recommendations were also made for the introduction of new criminal offences to deal with more extreme forms of surveillance or interception, and for regulatory safeguards in the context of certain types of police surveillance of both private and public places.

Draft Legislation in Report

A draft Privacy and Surveillance Bill is included in the Report.

Information on Implementation

Recommendations of the Commission were implemented in part by the *Criminal Justice (Surveillance) Act 2009*.